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The Solicitors' Journal

[REGISTERED AS A NEWSPAPER.]

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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iv.

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Current Topics.

Jury Incidents.

IN A RECENT case before Mr. Justice SHEARMAN (19th inst.) general amusement was caused by the discovery that a brother of the defendant was a member of the jury. He was directed to leave the jury-box and the case continued with eleven jurors. The disability of a juror for various reasons has been exhaustively dealt with in a number of cases. In *Atkins and another* v. *Fulham Borough Council*, 59 SOL. J., 644; 1915, 31 T.L.R. 564, which was a county court action, one of the jury was a member of the defendant council, and a verdict was returned in their favour. The judge refused a new trial on the ground that no injustice had been done. On appeal to a Divisional Court, however, it was held by Mr. Justice DARLING that the case had been in part decided by one of the defendants, and there must be a new trial. In criminal cases, as distinct from civil, it is essential that the jury consist of twelve, there being, in the words of Lord Chief Justice CAMPBELL in *Reg.* v. *Mellor*, 2 SOL. J., 414; Dears. & B. 468, "a manifest and important difference between the trial of a civil action and a criminal trial, in which there is a right of peremptory challenge." In *R.* v. *Wakefield*, 62 SOL. J., 309; 1918, 1 K.B. 216, a juror was personated by a person unqualified to be a juror, and a new trial was ordered on the ground that the prisoner had been tried by eleven qualified persons only. In a civil action, however, no exception would have been taken to eleven jurors if no injustice had been done and no objection had been taken before verdict. In a criminal case at the Stafford Assizes in 1842 a relative of the prisoner, who was indicted for assault and robbery, was found to be on the jury (*R.* v. *Wardle*, Car. & M. 647), and Mr. Justice ERSKINE, apparently uncertain of the proper course to adopt, conferred with Lord Chief Justice TINDAL. It was decided that there was no power to discharge the jury and that the case must continue. *Mellor's Case*, *supra*, in which a man by mistake sat on the jury through a murder trial in the place of another named on the panel, came on appeal before fourteen judges, who affirmed the conviction of the appellant on the ground that the Court for Crown Cases Reserved had no statutory power to award a new trial, although the majority of the judges appeared to have been in favour of it. Mr. Justice DARLING in *R.* v. *Wakefield*, *supra*, thought it not improbable that the judges in *Mellor's Case* would have ordered a new trial had they possessed the powers of the present Court of Criminal Appeal.

Shorthand and the Law.

SIR WALTER GREAVES-LORD, K.C., in a recent speech, emphasised the value of shorthand, not only in the domain of commerce, where it has proved of incalculable use, but also in the sphere of law, although here, as he proceeded to point out, it has not received that complete recognition which it merits. In all criminal trials at the assizes and quarter sessions, a shorthand note of the evidence is taken, and a transcript provided, if an appeal is taken to the Court of Criminal Appeal, but in civil cases the same rule does not apply, with the consequence that there is not the same assistance afforded to the appellate tribunals as is given to the Court of Criminal Appeal in considering and weighing the evidence. No one who has been in the habit of practising in the Divisional Court when taking appeals from county courts can have failed to notice how frequently the absence of a full note of the evidence has militated against the adequate consideration of the case. County court judges do their best, but the somewhat fragmentary note which as a rule they are able to take of the evidence, while sufficient for their purpose, seeing that they can fill in with the aid of their memory any lacunæ in the written words, may be almost incomprehensible to those who have subsequently to decide the case on the strength of these laconic notes. In Scotland, we understand, much more use is made of the shorthand writer than is the case here, and although it may be urged that the cost of proceedings may be slightly higher if a stenographer were appointed for each court, what is that in comparison with the increased likelihood of justice being more effectually administered? A further advantage will be gained, for in addition to a full note of the evidence being furnished, the presiding judge will be able to observe the demeanour of the witnesses more effectively if he is relieved from the irksome duty of noting down what he takes to be the substance of their evidence. We cordially associate ourselves with the hope expressed by Sir WALTER GREAVES-LORD that the system now in use in the higher criminal courts may be extended to other tribunals, particularly the county courts and courts of summary jurisdiction. In the City of London Court, this has been done for many years to the eminent advantage of the suitors.

The Cinema in Court.

A CINEMATOGRAPH film has been shown during the hearing of a case of furious driving at The Hague, in order to show the dangerous nature of the road where the accident occurred.

This is somewhat of a novelty, and raises questions of some importance. The camera, of course, has for many years past played its part in the courts; but in England a wise caution has been observed in admitting its work as evidence. The camera, it has been said, cannot lie; although many of us, contemplating our own portraits, have trusted and believed that it did. As for the cinema, it can be made to tell any tale. Apart from their undoubted value in tracing criminals, photographs have been admitted as some evidence of identity, both in civil and in criminal cases, subject to proper proof connecting the photograph with the person represented. In *R.* v. *Tolson*, 4 F. & F. 103, a bigamy case, part of the proof of the first marriage was given by production of a photograph which was identified by witnesses as that of a person whom they had seen married. But that the courts are properly careful in setting bounds to the use of this class of evidence appears from such cases as *Frith* v. *Frith*, 1896, P. 74, in which it was laid down that in matrimonial suits the court will not, unless in very special circumstances, act upon identification by photograph alone. Obviously, where it is sought to prove by photographs, whether still or moving, that a person performed some act, or was in a particular situation, proof should be given by the photographer himself of the fact of taking, developing and printing the photographs. Otherwise fraud would be easy by means of cleverly "faked" or composite pictures. The principle has been recognised in the courts. "In a criminal case, a photograph has been held admissible to show the permanent and material structure of a house, but not the interior disposition of the furniture, etc., which was required to be proved by witnesses" ("Phipson on Evidence," p. 541, citing *R.* v. *Lawton*, 30 Ir. L.T. J. 4). How misleading a cinematograph representation could be, and what false impressions it could create, are manifest. One need only recall the madly-galloping horses, so much faster than any Derby winner, the guardsmen marching as if to the quickest of fox-trots, or the wildly-careering motor cars, turning and twisting incredibly, that can be seen any day and anywhere.

Wife's Agency of Necessity.

A WIFE living with her husband may bind him by a contract made for necessaries, whereas a wife living apart from her husband and who has committed adultery cannot bind him. Can a wife bind her husband to pay her solicitor's costs of divorce proceedings in which a divorce was granted against her? This was the important, and hitherto undecided question in *Arnold and Weaver* v. *Amari*, where SANKEY, J., decided that she could not. The plaintiffs in this action were the solicitors who had acted for the wife in divorce proceedings instituted by the husband. They had satisfied themselves of the wife's innocence. On 7th April, 1927, the plaintiffs received a copy of a letter written by the wife to her husband, the defendant in the present action, saying that she did not intend to defend the suit. At that time the greater part of the costs now sued for had been incurred. The plaintiffs inquired why she had written the letter, and she told them that she did not admit the adultery, but that her husband had urged her not to defend the suit. The plaintiffs thereupon continued with the defence and on 12th May attended the hearing, with counsel, on behalf of the wife. She did not appear, the suit was therefore undefended, and the President pronounced in favour of the husband. The application of the wife's counsel for costs was refused, as, unfortunately, security for the wife's costs had not been obtained from the husband. The present action was brought against the husband to recover the costs on the ground that the wife had his authority to incur them. The cases quoted in argument (*Otway* v. *Otway*, 1888, 13 P.D. 141, and *Holt* v. *Holt*, 28 L.J. P. & M. 12) afforded no authority, as they arose in the Divorce Court, and the matter was governed by the peculiar practice of that court, and was not dependent upon the common law. In *Durnford* v. *Baker*, 1924, 2 K.B. 587, it was decided that a solicitor who appeared in an action begun by the wife could not recover costs incurred on her behalf against her husband. The question whether a solicitor could recover costs when, as in this case, the wife was defendant was expressly left open by the Court of Appeal. SCRUTTON, L.J., expressed the view that there might be grounds for thinking an exception existed in such a case, but ATKIN, L.J., while also reserving the point, said, p. 601, "It may be even in that case her solicitor would have to defend in reliance on the court's exercise of discretion."

Mutilated Bank Notes.

CONSIDERING THE amount of wear and tear to which bank-notes are subject, it is not a little surprising that they are not more often mutilated; this may, to some extent, account for the dearth of decisions as to the liability of the bank in such cases. There is, it is true, the well-known case of *Suffell* v. *Bank of England*, 9 Q.B.D. 555, but that was a case where the note was deliberately altered with the object of preventing the note from being traced, and there appears to have been no decision of any sort on the effect of accidental mutilation until the recent case of *Hong-Kong and Shanghai Banking Corporation* v. *Lo Lee Shi* 72 SOL. J., p. 68 came before the Judicial Committee on appeal from the Hong-Kong Supreme Court. The facts of that case were peculiar. The respondent placed a note in the pocket of some garment, and then having forgotten the fact, she washed and dried the garment, and was proceeding to iron it when she found a wad of paper in the pocket, which proved to be the remains of the bank-note. The note was restored, its chief characteristics being made plain, but the number was missing. Lord BUCKMASTER, after stating that the number was no part of the operative portion of a bill of exchange or promissory note, although its alteration was held to be material in the case of a Bank of England note, owing to the special features, said their lordships desired their judgment to be limited to this point, that in the special circumstances of this case it was possible, by means of the fragments of the note, assisted by verbal evidence, to establish a claim against the bank for the sum due upon the note. It would be easy to attach too much importance to this decision, and no doubt it turns on special circumstances rather than on general principles, but it is a useful and interesting case as being, apparently, the only one on a matter of some importance.

Lost Will.

THAT GREAT real property lawyer EDWARD BURTENSHAW SUGDEN, afterwards known as Lord ST. LEONARDS, appears to have been as little methodical and precise with regard to his will as certain other distinguished lawyers have been, with the result that his will could not be found, and the aid of the court had to be sought in order to establish it. Hence the much discussed case of *Sugden* v. *St. Leonards*, 1 P.D.154, decided in 1876. Prior to that decision, the law was understood to be that the contents of a lost will like those of any other lost instrument might be proved by secondary evidence, and the verbal and written declarations or statements made by a testator contemporaneously with or prior to the execution of his will were admissible as evidence to corroborate the other testimony as to what is in the will, but not to prove the *factum* or execution of the will. That was the law, but there were two cases in which it had been held that declarations made *after* the will was executed were admissible as secondary evidence of the contents. This latter point, however, came before the Court of Appeal in *Sugden* v. *Lord St. Leonards* when the court held (MELLISH, L.J., dissenting) that various statements of Lord ST. LEONARDS, whether made before or after the execution of his will, were admissible to prove its contents. This decision was much discussed and doubted in the House of Lords in *Woodward* v. *Gouldstone*, 11 App. Cas. 469, where the noble lords reserved their opinion as to the admissibility of post-testamentary declarations of a testator as to the contents of a lost will. The question therefore cannot be considered

as settled, and the decision in *Sugden* v. *St. Leonards* has not been overruled. Indeed, it was quite recently stated by Lord MERRIVALE, in *Barkwell* v. *Barkwell*, 72 SOL. J., p. 69 that the law as to the admissibility of declarations stood where it was left by *Sugden* v. *St. Leonards*.

Costs of Quarter Sessions Appeals.

THE ARCHAIC procedure governing the above was referred to by Dr. A. E. W. HAZEL, Recorder of Burton-on-Trent, in a recent case. At the previous quarter sessions a motorist had successfully appealed against a conviction, and had been awarded costs to be taxed out of sessions. The appellant, being dissatisfied with the items allowed by the Clerk of the Peace, appealed to the Recorder to review the taxation. Counsel appeared on behalf of the appellant, the police, and the Clerk of the Peace. Objection was taken on behalf of the police that the Recorder was being asked to decide an appeal against his own decision, which he had no jurisdiction to do. It was argued on behalf of the Clerk of the Peace that the costs had been made part of the Recorder's order, and that when the taxation was complete that particular sessions had ended. The Recorder, in giving judgment, observed that quarter sessions in boroughs inherited some of the archaisms of the ancient county quarter sessions. For example, each session stands by itself and comes automatically to an end unless definitely adjourned. Therefore, where judgment is given with costs, they must be obtained before the session comes to an end. Where the order is silent as to costs, they cannot be obtained at subsequent sessions. The Clerk of the Peace has considerable discretion, which the court has power to verify. In the case before him, the judgment at the last sessions could have been properly completed had an arrangement been made to prolong the sessions for the purpose of taxation. It would then have been possible to complain before the taxation was formally complete. The letter of complaint, however, contained the following: "We are enclosing the bill as taxed"—showing the taxation was complete. The vitality of the last sessions had therefore come to an end, and he was not entitled to re-open them. The appeal against the taxation was therefore dismissed with costs for the police, but none for the Clerk of the Peace; the costs to be taxed out of sessions, by the acting Clerk of the Peace.

Middle Temple Library.

MR. JOHN ING, senior library porter of the Middle Temple, who was appointed to the library in 1878, completes his fiftieth year in February next. A remarkable record of family service, covering 154 years, commenced with the appointment of his great-grandfather, HENRY ING, as under-porter to the Inn, in 1828; he served for thirty years. His grandfather, JOHN ING, was in the library for thirty-nine years, from 1838 to 1877, and his father, JOHN B. ING, for thirty-five years, from 1861 to 1897. Mr. ING, despite his sixty-eight years, is remarkably energetic, a fact to which the library owes its reputation as one of the cleanest in the country. He gave further evidence of his energy during the heavy fall of snow at Christmas time, when, owing to the difficulty of obtaining assistance on Boxing-Day, he personally cleared a considerable quantity of snow from the library roof to ensure that no books were damaged by the melting snow finding its way into the library as he recollected had been the case some years ago with harmful results to a number of books. His thorough knowledge of the library's contents, and the unfailing courtesy and interest with which he gives his services alike to K.C. or student have earned him the esteem of all who use the library. His retirement would leave a gap impossible to fill adequately, and it is to be hoped that he will be spared to continue his useful work for many years. It is understood that the Benchers of the Inn will shortly express their appreciation of his long and invaluable service by an informal presentation.

Matrimonial Jurisdiction of Justices:

Wife's Right to Maintenance.

THE repeal by the Summary Jurisdiction (Separation and Maintenance) Act, 1925, of the words in s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, "and shall by such cruelty or neglect have caused her to leave and live separately and apart from him," has led to differences of opinion upon the present meaning and effect of the earlier section as it now stands, in regard to cases where husband and wife are already apart before an application is made to justices by the wife on the ground of neglect to maintain.

The narrowest view contended for is that no wife living apart from her husband can apply for an order on the ground of neglect to maintain unless that has been the occasion of her leaving. This view requires a special reading of the statute which does not receive general acceptance, and is in fatal disaccord with *Diggins* v. *Diggins*, 1926, 43 T.L.R. 37, the decision in which was discussed in an article, p. 71 of last year's volume. A further heavy blow is dealt at it in *Dewe* v. *Dewe*, 72 SOL. J., p. 69.

A second view is that a wife, having left her husband upon any ground which would be "reasonable cause" for "desertion" (as to which see Lieck & Morrison's "Matrimonial Jurisdiction of Justices," p. 35*), is entitled, if he fail to maintain her apart, to come to the justices for an order of maintenance. Cases of separation by mutual consent, where the agreement to live apart was the result of circumstances amounting to "reasonable cause" for the wife's removal from the matrimonial home, and where the agreement had been repudiated or become inoperative, would be included. This seems to be the least that follows from *Diggins* v. *Diggins*, *supra*, even if it were not otherwise to be inferred from statutes and other decided cases. But the caution in *Diggins* v. *Diggins* —that not every deed can be disregarded—must not be neglected.

A third, and very wide proposition indeed may be drawn from *Dewe* v. *Dewe*, as reported, that, so far at least as spouses living apart by mutual consent are concerned, the grounds on which they parted are irrelevant. The mere facts that an agreement has become inoperative, here due to the husband's bankruptcy, and that he has subsequently failed to maintain his wife, entitle her to come to justices for an order on the ground of his neglect to maintain.

It is not said in the course of the report what were the circumstances in which the separation deed came into existence, and the judgment, as reported, is silent too upon this point. The natural inference is that those circumstances are not considered relevant.

The case is apparently to go to the Court of Appeal, when the whole position may be reviewed, and some limits be set to the development of the law begun by the statute of 1925 and carried on by the cases since decided. If not, we may reach a state of things where the entering into a deed of separation confers upon the wife, in every case, not merely a contractual right to maintenance apart, but a right, if the deed fails, to a judicial order for maintenance.

Primarily a wife's right to maintenance springing from her status is a right to her husband's support while she lives with him and performs the usual duties of a wife according to their station of life. The right has, by statute, been extended to wives living apart on certain grounds. The Act of 1925 has given a further extension to the right. It is of the highest importance that its limits should be authoritatively determined.

One more consideration arises upon the latest decision. The deed being out of the way, a *bona fide* offer of the husband to resume cohabitation, refused by the wife, might be a good answer to a claim for maintenance apart.

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Legal Liability for Damage by Floods and Tides.

(*Continued from page* 41).

(PART II.)

IN the previous number the position in respect of the extraordinary tide in London was discussed, and especially the responsibility of various statutory authorities. There remains to be considered the civil rights and liabilities of landowners and others when their ordinary position in law is not altered by local statutes, such as the Port of London Act and the Thames Conservancy Acts. In the case of low-lying agricultural land, however, especially in Lincolnshire, and the fen country further south, local drainage Acts will almost certainly have been applied pursuant to s. 26 of the Land Drainage Act, 1861, or the older Land Drainage Acts. The Act of 1861 was amended in 1918, and again as recently as 1926. Section 37 preserves the liability of any landowner to keep a drain or flood bank in proper order and repair by reason of his tenure, unless the local commissioners commute that liability under s. 34. The Board of Agriculture and Fisheries has also certain powers of initiative to prevent the flooding of agricultural lands under s. 15 (2) of the Act of 1918, and a county council may enforce the obligation to keep a drain in proper order under s. 2 of the Act of 1926. In default they may do the work and recover the expenses as a civil debt, but there is no section imposing penalties under the Act.

As to sea-walls, it appears from Sir MATTHEW HALE'S first treatise that he considered the owners of adjoining lands were compellable to their repair by common law, see Moore's "History of the Foreshore," 3rd ed., p. 366. This doctrine, however, was not accepted by COLERIDGE, C.J., and MELLISH, BRETT and AMPHLETT, L.JJ., in *Hudson* v. *Tabor*, 1877, 2 Q.B.D. 290, a case in which an Essex frontager failed to repair his length of a sea-wall and in consequence the high tide of 20th March, 1874 (the same tide which gave rise to the London case of *Nitro-Phosphate Co.* v. *London & St. Katherine's Dock Co.*, 1878, 9 C.D. 503, cited *ante*, p. 40), caused water to flow over the defendant's wall and on to the plaintiff's lands, causing considerable damage. It was held that there might be a right by prescription, but that on the facts before the court, no such right was there established. The rights or duties of the Crown to protect the realm from waste of the sea were discussed incidentally, pp. 293-294, but received more authoritative recognition in *A.-G.* v. *Tomline*, 1880, 14 Q.B.D. 58, where it was held that a landowner could be restrained from removing shingle from a natural sea defence at the instance of the Crown. The defendant being under no obligation to keep the sea out, the case was not without difficulty, but, since the Crown itself would, as owner of the bank, have committed a breach of duty in weakening it, it was held that a subject had no higher right. These cases may also be quoted to show that the Thames frontager owners, as such, had no liability to their neighbours in respect of the high tide of 7th January last, nor probably, any liability other than that (if any) imposed upon them by the Flood Prevention Act of 1879.

In respect of a landowner's storage of water for his own purposes, it is perhaps hardly necessary to do more than to cite the leading case of *Rylands* v. *Fletcher*, 1868, L.R. 3 H.L. 330, with the exception carved out of it by *Nichols* v. *Marsland*, 1875, L.R. 10 Ex. 255, when the injury arises from an "act of God." English lawyers are so used to the doctrine of *Rylands* v. *Fletcher*, and it appears so reasonable to them, that it may be difficult to understand why it finds so little favour in the United States. It has been commended in Minnesota, but New York and Massachusetts will not have it. In one or two states it has been rejected by the courts, but imposed by the Legislature.

The liability of one who diverts a watercourse and so causes damage by flooding is discussed in *Fletcher* v. *Smith*, 1877, 2 A.C. 781, which in effect imports the principle of *Rylands* v. *Fletcher* in such a case. The latter authority was of necessity quoted by counsel for the unsuccessful appellants, an ingenious though fruitless effort being made to prove its favourable import. *Boynton* v. *The Ancholme Drainage Commissioners*, 1921, 2 K.B. 213, was a case in which the defendants, a statutory authority, had diverted a river and constructed works to carry off its flow, but, in failing to keep their works properly maintained and cleansed, had caused flooding to neighbouring land. It was held that in the circumstances they were liable.

The position of a landowner who, embanking his own property, thereby throws an increased volume of flood water on to that of his neighbour, is fully discussed in *Gerrard* v. *Crowe*, 1921, 1 A.C. 395. This was a Privy Council case from New Zealand, but nothing turned on the local law, and in fact English and Scottish authorities were quoted in the judgment as of equal authority on a common law. It was laid down that a landowner may lawfully embank and protect his own property against floods provided that he does not obstruct a "flood channel," recognised as an ancient or rightful course along which such waters have been accustomed to pass. That the cases run somewhat fine, however, will be seen from comparing *Greyvensteyn* v. *Hattingh*, 1911, A.C. 355, where a proprietor of land was held to be justified in driving a swarm of locusts from his own land to his neighbour's, and *Whalley* v. *L. & Y. Railway Co.*, 1884, 13 Q.B.D. 131, in which the company was held liable for flooding a neighbour's land by cutting through their embankment and so releasing a quantity of rain water which had accumulated on their own. In each case nature had sent something harmful on to the land, but in the one the owner was, in the other was not, held justified in actively diverting the trouble to his neighbours.

In the ordinary case of landlord and tenant, the extra cost of repairs due to a flood would normally fall on a tenant who had entered into a covenant to repair or otherwise, with the exception of cases falling within s. 1 (1) of the Housing Act, 1925, in which the landlord impliedly undertakes at all times during the tenancy to keep the tenement reasonably fit for human habitation. A landlord who by his own negligence, or otherwise through persons claiming under him, has caused his tenant's land or house to be flooded, is no doubt liable on his express or implied covenant for quiet enjoyment. The authorities on this point are collected and discussed in the recent case of *Booth* v. *Thomas*, 1926, Ch. 397. Perhaps it need hardly be added that he would not be liable on his covenant for damage due to an "act of God."

Whether one who has suffered damage from flood can recover on a policy is of course a pure question of contract. If a householder is protected by the modern fasionable "all-in" policy, he certainly ought to be able to do so. An "act of God," though it may have been an excepted risk in the more ancient forms, is exactly the kind of occurrence against which both traders and householders now wish to be insured.

In respect of income tax, attention may perhaps be called to r. 9 of Sched. A, No. V, of the Income Tax Act, 1918, and the corresponding r. 3 of Sched. B, relating to losses caused by flood and tempest. These rules, however, only apply if for such reasons land has been rendered incapable of cultivation for a year.

LORD JUSTICE ATKIN ON MEDICAL EVIDENCE.

Mr. Roland Burrows, Recorder of Chichester and Reader in Evidence, Civil Procedure and Criminal Law to the Inns of Court, gave an address recently at the Royal Institute of Public Health, Russell-square, W., on "The Medical Practitioner in Relation to the Administration of Justice." Referring to the limitations as regards inferences made from observed facts, Lord Justice Atkin, who presided, said: "The court respects a man who says he is not sure of a fact, or whether the inference on a certain observed fact is correct or not. In fact, it would be worth his while to say he is not sure, several times, even though he may be."

Enrolment of Assurances to Charitable Uses.

Of the formalities hitherto required by s. 4 of the Mortmain and Charitable Uses Act, 1888, to be observed in executing assurances of land to or for the benefit of any charitable uses, and assurances of personal estate to be laid out in the purchase of land to or for the benefit of any such uses (with certain exceptions), that of enrolment was perhaps the one most neglected.

One of the reasons for neglecting to observe this formality may have been the fact that in course of time the Statute of Limitations cured the defect in spite of its non-observance, and more so, as the assurance gave, as a rule, a good holding title, and it might well be supposed that there would be few vendors who would care to take advantage of the provisions of the Mortmain and Charitable Uses Act, 1888, and treat the assurance as being void.

So, too, the omission to enrol was not, in some cases, necessarily fatal to the validity of such an assurance, as the omission did not prevent the property conveyed from vesting in the personal representatives of the trustee: see *In re Forbes*, 27 T.L.R. 27. Since the coming into force of the Settled Land Act, 1925, the formality of enrolment, as well as that of attestation in the presence of two witnesses, is no longer required, as s. 29 (4) of that enactment provides that "Every assurance of land or of personal estate within the meaning of section 4 of the Mortmain and Charitable Uses Act, 1888, or if the charitable uses are declared by a separate instrument, then that instrument shall, in the place of the requirements respecting attestation and enrolment prescribed by sub-sections (6) and (9) of that section, be sent to the offices of the Charity Commissioners within six months after the execution thereof, or within such extended period as the Commissioners may, either before or after the expiration of the six months, in any particular case allow for the purpose of being recorded in the books of the Commissioners."

Sub-section (4) also provides that "where the original cannot be produced an attested or office copy may be sent instead of the original." These provisions, however, do not apply to registered dispositions of registered land or to assurances or instruments required by s. 117 of the Education Act, 1921, to be sent to the Board of Education, and only apply to instruments executed after the commencement of the Act.

As regards assurances executed before 1st January, 1926, the requirements respecting attestation and enrolment prescribed by s. 4 of the Mortmain and Charitable Uses Act, 1888, as well as the other requirements imposed by that section, must be observed, except as regards assurances for educational purposes which, whether made before or after the passing of the Education Act, 1921 (11 & 12 Geo. 5, c. 51), i.e., 19th August, 1925, are, by s. 117 of that enactment, exempted from any restriction of the law relating to mortmain and charitable uses, but every assurance of land or personal estate to be laid out in the purchase of land for such purposes must be sent to the Board of Education for the purpose of being recorded in the books of the Board as soon as may be after the execution of the deed or other instrument, or, in the case of a will, after the death of the testator.

A distinction may be drawn between enrolment under s. 29 of the Settled Land Act, 1925, and s. 117 of the Education Act, 1921, and enrolment under the Mortmain and Charitable Uses Act, 1888.

Under the Settled Land Act, 1925, and the Education Act, 1921, an assurance, or separate instrument, not enrolled or recorded thereunder, is not void, whereas under the Mortmain and Charitable Uses Act, 1888, s. 4, non-enrolment in the Central Office of the Supreme Court of Judicature within six months after the execution of the assurance, made the assurance void, unless the omission to enrol was remedied under s. 5. So, too, under the repealed Act of 9 Geo. 4, c. 36, non-compliance with any one of the conditions imposed by that statute made the assurance absolutely void not merely as regards the trust, but also as regards the legal estate given: *Churcher* v. *Martin*, 42 C.D. 312.

It would seem that non-enrolment under 9 Geo. 4, c. 36, did not make the assurance altogether inoperative where the party entitled to the property in default of non-compliance with the provisions of the statute did not insist upon it (*Att.-Gen.* v. *Ward*, 6 Hare 484), but the court could not enforce the trusts of the deed even in equity (*Att.-Gen.* v. *Gardner*, 2 De G. & Sm. 102).

On the other hand, the court would not after a considerable lapse of time allow trustees, because no regular enrolled conveyance was produced, to claim beneficially, and if necessary would presume that everything was done which would make the disposition to the charity good (*Att.-Gen.* v. *Moor*, 20 Beaven 119, at p. 121). In fact, in some cases the court has presumed that enrolment of a lost deed of grant was duly made, or enrolment deemed to have been unnecessary where, for example, the grant might originally have been made for some charitable purpose which might have been lost sight of, the grant of which did not require enrolment (*Haigh* v. *West*, 1893, 2 Q.B. 26).

The effect of a declaration in a statute that an assurance not executed in accordance with its provisions shall make the assurance void, is stated to be as follows:—

Where the enactment has relation only to the benefit of particular persons the word "void" *may* be understood as "*voidable*" only, at the election of the persons for whose protection the enactment was made and *who are capable of protecting themselves*, but when it relates to persons not capable of protecting themselves, and charities are in this position, or when it has some object of public policy in view which requires the strict construction, the word receives its natural full force and effect (Maxwell, 6th ed., 381).

The jurisdiction of the Charity Commissioners or the Board of Education (as the case may be), under s. 29 of the Settled Land Act, 1925, to record an assurance to charitable uses, may be exercised after a considerable period of time has elapsed after the execution of the assurance, thereby rendering it effective for all the charitable purposes mentioned therein.

Under s. 5 of the Mortmain and Charitable Uses Act, 1888, the Court, or the enrolment officer, has a wide discretion and power to remedy an omission to enrol within the requisite time, but no power is given to enrol an assurance which had not been attested in accordance with s. 4, sub-s. (6) of the Act.

The power to remedy omission to enrol within the requisite time, under s. 5 of the Mortmain and Charitable Uses Act, 1888, if exercised, did not, where the assurance was purely voluntary, displace any equity which might have arisen by reason of the omission to enrol, and it is conceived that enrolment of a voluntary assurance by the Charity Commissioners or Board of Education will not displace any equity which may have arisen before the assurance was enrolled or recorded by them under s. 29 of the Settled Land Act, 1925.

As regards the application of s. 29, sub-s. (4), to assurances *by will*, the sub-section is made to apply to every assurance of land or of personal estate to be laid out in the purchase of land to or for the benefit of any charitable uses within the meaning of s. 4 of the Mortmain and Charitable Uses Act, 1888, and no reference is made to the Mortmain and Charitable Uses Act, 1891.

"Assurance" is defined by the Act of 1888—unless the context otherwise requires—as including a gift by will, and will includes a codicil, and s. 6 of the Act exempts from its provisions assurances by will of land for a public park, a school house for an elementary school, a public museum, and assurances by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes.

But the provisions of the Act of 1888 are such as to render it impossible, except in the special cases above mentioned, to extend them to a devise of land for any other charitable purposes. A devise of land for charitable purposes is now governed by the Mortmain and Charitable Uses Act, 1891 (see s. 5), and personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable purposes, is to be held to or for the benefit of the charitable purposes as though there had been no such direction to lay it out in the purchase of land (s. 7), but the court, Charity Commissioners, or Board of Education, as the case may be, may, in certain cases, sanction the retention or acquisition of such land (s. 8).

The Mortmain and Charitable Uses Act, 1891, however, does not apply to any assurance to which the exemptions contained in Pt. III of the Mortmain and Charitable Uses Act, 1888, i.e., a public park, a school house for an elementary school, a public museum (see s. 10 of the Act of 1891), neither does it apply to any assurance for educational purposes (see Education Act, 1921, s. 117).

These statutory enactments have, it will be seen, a different result where the assurance of personal estate directed to be laid out in the purchase of land to or for the benefit of any charitable purpose, is by deed, and where the assurance is by way of a bequest of personal estate subject to a direction to lay it out in the purchase of land.

Where the assurance is by deed, the direction to lay out in the purchase of land must be followed. Where it is by will, the bequest has to be held as though there had been no such direction (s. 7 of the Act of 1891), unless the court, Charity Commissioners, or Board of Education, sanction the acquisition if the land is required for the purposes of the charity and not as an investment (s. 8). But ss. 7 and 8, as already stated, do not apply where the bequest can be supported under the exemptions mentioned in ss. 6 and 7 of the Mortmain and Charitable Uses Act, 1888 (see s. 10 of the Mortmain and Charitable Uses Act, 1891), nor to a bequest for educational purposes (Education Act, 1921, s. 117).

The Mortmain and Charitable Uses Act, 1891, does not, however, exclude or impair any jurisdiction or authority which might otherwise be exercised by the court, or by the Charity Commissioners or Board of Education. Under its ordinary jurisdiction the court has always had power to sanction the purchase of land in furtherance of the objects of a particular charity (*Att.-Gen.* v. *Mansfield*, 1845, 14 Sim. 601), but investment of money in land otherwise than for such a purpose, has, since the passing of the Act of 9 Geo. 4, c. 36, been considered contrary to the policy of that enactment, as well as to the usual practice of the court (*Att.-Gen.* v. *Wilson*, 1838, 2 Keen 680). In come cases, the court has statutory jurisdiction to direct such an investment, for example, under the Lands Clauses Act, 1845; and the Charity Commissioners and Board of Education have power to authorise under the jurisdiction given them by the Charitable Trusts Acts, 1853 to 1925, an acquisition of land in certain cases, and nothing in s. 29 of the Settled Land Act, 1925, affects this jurisdiction in regard to the administration of charitable trusts (see sub-s. (3) of that section).

WINTER ASSIZES.

The following dates and places fixed for holding the Winter Assizes are announced in the *London Gazette*.;—

NORTH-EASTERN CIRCUIT (Mr. Justice Branson and Mr. Justice Finlay).—13th February, Newcastle; 21st February, Durham; 28th February, York; 5th March, Leeds.

SOUTH-EASTERN CIRCUIT (2nd portion) (Mr. Justice Shearman).—14th February, Hertford; 18th February, Maidstone; 28th February, Guildford; 6th March, Lewes.

MIDLAND CIRCUIT (Mr. Justice Sankey).—14th January, Aylesbury; 19th January, Bedford; 24th January, Northampton; 30th January, Leicester; 6th February, Oakham; 8th February, Lincoln; 16th February, Derby; 25th February Nottingham.

A Conveyancer's Diary.

Fee Simple Determinable by Limitation or Condition (Trust until Marriage).

A fee determinable whether by limitation or condition subsisting immediately before 1926, is converted into an equitable interest: L.P.A., 1925, 1st Sched., Pt. I, subject to the exceptions created by *ib.*, s. 7 (as amended); similarly such an interest created after 1925 takes effect as an equitable interest: *ib.*, s. 1.

The beneficial owner of such an interest in possession is a tenant for life: S.L.A., 1925, ss. 20 (1) (iii), 117 (1) (iv), and the land becomes settled land: *ib.*, s. 1 (1) (ii) (*c*).

Suppose that, before 1926, land is limited to the use of A in fee simple until the solemnisation of his marriage, and thereafter to uses in strict settlement. At the commencement of the L.P.A. the marriage has, for some reason, been postponed. Under L.P.A., 1925, 1st Sched., Pt. II, paras. 5 and 6 (*c*), the fee simple absolute vests in A, and the S.L.A. trustees pursuant to S.L.A., 1925, 2nd Sched., para. 1, execute a vesting deed in favour of A. This would be correct, for "a settlement subsisting at the commencement of this Act" includes a settlement created by virtue of this Act immediately on the commencement thereof: *ib.*, s. 117 (1) (xxiv).

Now, if it is agreed that the marriage is not to be solemnised, or if the marriage becomes impossible, A thereupon becomes entitled to have the settled land conveyed to him discharged from the settlement: *ib.*, s. 18 (2) (*b*), and will call on the S.L.A. trustees to execute a deed of discharge under *ib.*, s. 17. If any question arises whether or not A is entitled to a deed of discharge, the trustees can apply to the court and act under its directions. Thus the land, under such a limitation, need not remain "settled land" one minute longer than is necessary for preserving the rights of the beneficiaries.

Next, suppose that the settlement is made by deed after 1925. In this case there will be a vesting deed in favour of the tenant for life, which should be executed as an escrow to be delivered only on the solemnisation of the marriage: S.L.A., 1st Sched., Forms Nos. 1 and 2, and see note at foot of Form No. 3; this will be followed by the trust deed, which will also be executed as an escrow.

But if a mistake is made and the vesting deed is not executed as an escrow, the error can be corrected as soon as it is shown that the marriage will not or cannot be solemnised. In this case the land will be re-conveyed to the settlor, if he was not the tenant for life, or a deed of discharge will be executed under S.L.A., 1925, s. 17, in favour of the person who took the fee simple absolute under the vesting deed.

Settlement by Way of Trust for Sale (Trust until Marriage).

Where, after 1925, land is conveyed by A to trustees for sale to hold the net proceeds and the rents until sale on the trusts of A's marriage settlement of even date, the practice is not yet uniform. In some cases the fee simple absolute is conveyed to the trustees in trust for A until the solemnisation of the marriage and thereafter upon trust for sale. This is on the lines of the pre-1926 practice and, unless executed as an escrow to be delivered only on the marriage, would it seems confer on A an equitable fee simple terminable on the marriage. The result might be, see *infra*, that no legal estate would pass to the trustees for sale. If the conveyance, as would be usual after 1925, is executed as an escrow to be delivered on the marriage, the point would not arise, for the trustees would never hold in trust for A.

The other practice is for A to convey the fee simple absolute to the trustees on an immediate trust for sale and to hold the net proceeds and the rents until sale in trust for A, absolutely, until the marriage, and afterwards on the trusts of the settlement of even date. On the whole, this is the better practice; it does away with the need for executing the conveyance as

an escrow. If the marriage is not solemnised, then A can call on the trustees to re-convey the land to him discharged from the trust for sale: see L.P.A., 1925, s. 23.

Every settlement *inter vivos* of a legal estate, after 1925, is to be made by a vesting deed and trust instrument, and if effected in any other way does not transfer or create a legal estate: S.L.A., 1925, s. 4 (1). Thus, a conveyance (not being an escrow) to trustees of a legal estate in trust for the settlor till the marriage and afterwards on trust for sale does, on a strict construction, create a settlement within the Act of a legal estate, though no doubt it was not intended to: *ib.*, s. 1 (7). The legal estate does not on that construction pass to the trustees, and it might even be held to be an instrument *inter vivos* "intended to create a settlement of a legal estate" not complying with the requirements of the Act: *ib.*, s. 9 (1) (iii).

However that may be, if the conveyance is not executed as an escrow to be delivered on the solemnisation of the marriage, and unless the court can hold that until the marriage the deed only operates as a contract, the contract being to convey the land to the trustees on trust for sale, or for some other reason can hold that it is not a settlement within s. 4, then, after the marriage is solemnised, a further assurance of the legal estate, to the trustees, should be obtained from the settlor.

Landlord and Tenant Notebook.

Fixtures. The law as to fixtures assumes a certain importance at the present moment, since under s. 1 (1) of the Landlord and Tenant Act, 1927, "trade or other fixtures which the tenant is by law entitled to remove" are not included within the improvements in respect of which a tenant may claim compensation.

Quidquid solo plantatur solo cedit is a general maxim of the law and the law of fixtures is merely a particular application of this doctrine. It is necessary, however, to determine in the first instance whether the article in question is a fixture, and secondly, if it is a fixture, whether or not it is removable by the tenant.

It must carefully be borne in mind that everything which is apparently fixed to the soil is not necessarily a fixture.

Generally speaking, there appear to be two cases in which an article will not be a fixture:—

(1) Where it is not actually attached or affixed to the soil. Thus, in "Amos and Ferrand on Fixtures" (3rd ed., at pp. 2, 3) the following definition of "fixtures" is to be found, a definition which was quoted with approval in *Turner* v. *Cameron*, 1870, L.R. 5 Q.B., at p. 311:—

> "It is necessary in order to constitute a fixture that the article in question should be let into or united to the land or to some substance previously connected with the land. It is not enough that it has been laid upon the land, and brought into contact with it. The definition requires something more than juxtaposition; as that the soil shall have been displaced for the purpose of receiving the article or that the chattel should be cemented or otherwise fastened to some fabric previously attached to the ground." (Cf. also *Bain* v. *Brand*, 1876, 1 A.C., at p. 772.)

To this general principle, however, there is an important exception, viz., that an article, though not a chattel, annexed to the freehold, will in certain circumstances be regarded as being constructively annexed in accordance with the principles *res accessoria sequitur rem principalem*.

Thus, locks and keys, doors and windows, even though they can be made to slide out of their hinges, are fixtures (cf. *Liford's Case*, 11 Co. 46B, 50B), so also are blocks of stone placed one on the top of another without any mortar or cement for the purpose of forming a dry stone wall (*Holland* v. *Hodgson*, 1872, L.R. 7, C.P., at p. 335), and even statues and ornaments held in position by their own weight have been considered to be fixtures, where they are essentially part of a house, or of the architectural design of a house or its grounds: *D'Eyncourt* v. *Gregory*, L.R. 3 Eq. 382 (cf. also *Monti* v. *Barnes*, 1901, 1 K.B. 205—dog grates substituted for ordinary fixed grates).

(2) Where the article though actually affixed is only so affixed because its enjoyment as a chattel is otherwise impossible.

The tests for determining whether or not such articles are fixtures will be found very clearly summarised in the judgment of Parke, B., in *Hellawell* v. *Eastwood*, 1851, 6 Ex., at p. 312. In that case it was held that certain cotton spinning machines called "mules," which were fixed by means of screws, some into the wooden floor, some into lead which had been poured in a melted state into holes in stones, for the purpose of receiving the screws, were not part of the freehold (i.e., were not fixtures) and were accordingly distrainable as rent. In delivering judgment, Parke, B., laid down the following tests, which are to be applied to articles which are in fact affixed to buildings or to land. "The only question," said the learned judge, "is whether the machines when fixed were parcel of the freehold; and this is a question of fact, depending on the circumstances of each case, and principally on two considerations: First, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them, whether it can easily be removed *integre, salve et commode*, or not without injury to itself or the fabric of the buildings; secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, . . . or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel" (cf., also, *Turner* v. *Cameron*, L.R. 5 Q.B., at p. 313, and cf. also *Holland* v. *Hodgson*, L.R.7 C.P., at p. 337, where *Hellawell* v. *Eastwood* is discussed). While the principles enunciated in *Hellawell* v. *Eastwood* may be regarded as correct, it is doubtful whether that case would be now decided in the same way, especially in view of such decisions as *Reynolds* v. *Ashby*, 1904, A.C. 466.

Our County Court Letter.

COMPULSORY PILOTAGE.

An attempt to collect £3 10s. in respect of the above failed in the case of *Humber Conservancy Board* v. *Federated Coal and Shipping Co., Ltd.*, 1927 W.N. 310. The defendants' vessel, "Maud Llewellyn," while on a voyage to the north-east coast of England, signalled to Lloyds signal station at Spurn Point to ascertain the port for which she was bound. Besides the signal station, there were at Spurn Point a light-house, four houses and a trolley line. The "Maud Llewellyn" did not enter the Humber, but remained a mile and a half out at sea, and ignored the plaintiffs' pilot boat. The latter offered her services by flying her burgee. The plaintiffs claimed pilotage dues on the ground that the defendants' vessel had made use of a port within a compulsory pilotage district. The defendants contended that they did not know their vessel was in a compulsory pilotage district, and that Spurn Point was not a port. The Pilotage Act, 1913, s. 11 (1) provides that every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving or making use of any port in the district . . . shall be under the pilotage of (*a*) a licensed pilot of the district, or (*b*) a master or mate holding a pilot's certificate for the district. The said Act, as provided by s. 62 thereof, is to be construed as one with the Merchant Shipping Act, 1894. The latter Act, s. 742, defines "port" as including "place." The county court judge at Kingston-upon-Hull held that Spurn Point was a port within the meaning of the above three sections, and as the "Maud Llewellyn" had made use of its facilities, he gave judgment

against her owners, the defendants. The latter had the advantage of having their appeal heard by Lords Justices SCRUTTON and SARGANT, sitting in the Divisional Court as additional judges of the King's Bench Division. It was held that the *ejusdem generis* rule applied, and that "place" meant a place having some or most of the characteristics of a port. It was putting too wide a meaning on the word to say that a place, by virtue of the above sections, was therefore a port. Spurn Point was certainly a place, but it had none of the characteristics of a port, and there was no liability for pilotage dues. The county court judgment was therefore reversed.

It will therefore be a problem in future to decide whether on the facts a case is governed by the above decision, or that in *W. H. Muller and Company's Algemeene Scheepvaartmaatschappij* v. *Corporation of Trinity House of Deptford Strond*, 1925, 1 K.B. 166. The plaintiffs there claimed £1,351 for overpaid dues in respect of the pilotage of the Batavier line of steamships in the London Pilotage district. On voyages from Rotterdam the plaintiffs' ships used the shorter south channel into the Thames (via the Tongue light vessel) instead of the longer north channel, via the Sunk light vessel. The latter was the point at which the Defendants' pilot cutter was stationed, but as an act of grace pilots were permitted to offer their services in the south channel in motor boats hired from Margate. The defendants' bye-laws specified the pilotage rates, which were lower for the south channel than for the north, but there was a special provision as follows: "A ship which enters the London Pilotage District and is subject to compulsory pilotage shall take a pilot at the proper pilot station, and unless able to obtain one for reasons acceptable to Trinity House, shall pay the full pilotage rate and shipping charge." The plaintiffs claimed that (1) when they took a pilot from the Tongue they were only liable for the rate from there and not from the Sunk; (2) when no pilot offered his services they were not liable for dues; (3) the bye-laws were *ultra vires* and void. The defendants contended that (1) under s. 11 all reasonable steps must be taken to find a pilot, i.e., the ship must go to the pilot station, or in default pay the dues; (2) the bye-laws were valid under the Pilotage Act, 1913, s. 17 (1) (*f*). Mr. Justice ROWLATT observed that the question was whether s. 11 (1) creates a debt for pilotage dues, in view of the fact that s. 11 (2) provides for a penalty (double the dues) to be exacted, if a ship is not under pilotage after a pilot has offered to take charge. The learned judge gave judgment for the plaintiffs. He held that the section meant—not that no vessel shall navigate in a compulsory district without a pilot—but that she must continue to fly the pilot flag and take on board any pilot who offers his services. The above bye-laws were also not binding on the plaintiffs, as under s. 17 (above) there is only power to levy dues for services rendered, and not merely for services available.

The county court judge in the first case above, found as a fact that the pilot boat had offered her services, so that there was *prima facie* a liability within the decision in the second case. The Divisional Court, however, decided the case on another point—viz., the meaning of the word "place."

Practice Notes.

INCOME TAX.

UNDER r. 11 of Cases I and II of Sched. D of the Income Tax Act, 1918, an adjustment of assessment may be claimed where a change occurs in a partnership, or where a person succeeds to a trade or profession, if it can be proved to the satisfaction of the Commissioners that the profits have fallen short of the sum assessed owing to some specific cause since the change took place. No time limit is mentioned in the Act during which such claims may be preferred, and it has become the practice for the revenue authorities to accept notices of claims if sent in within six years of the end of the year of assessment to which the application relates. It is understood, however, that claims will not be admitted under this rule in future unless they are preferred within twelve months of the end of the year of assessment concerned. According to the ruling of ROWLATT, J., in *Owl Mill Company* (1920), *Ltd.* v. *Croft*, r. 11 claims should be made within the normal time allowed for appeals, viz., twenty-one days of the date of the notice of assessment, but the Board of Inland Revenue is not taking the full advantage of this decision and will admit claims within twelve months. It is somewhat surprising, however, that in view of the fact that the rule ceases to operate in its present form as from the 5th April next, the authorities should alter the practice that has prevailed for so many years.

Practitioners have met with a number of difficulties in connexion with the relief granted by s. 29 (3) of the Finance Act, 1926, and one of the chief is where actual accounts of trading have not been rendered annually to the local inspector of taxes. Some officials have definitely refused to admit applications under the section in such circumstances, but we understand that the Board of Inland Revenue are not supporting them in this connexion. All these claims have to be considered on their merits, but a case will not be turned down merely by reason of the fact that no accounts are available for the six years that enters into the computation. In some instances the amounts of the yearly assessments are adopted as a compromise, and this basis seems most fair in the absence of more definite evidence.

It is interesting to remember that if a golf club is converted into a limited liability company the concern is treated as an ordinary trading concern when considering income-tax liability. In the case of mutual golf clubs, however, the Commissioners do not now make assessments on green fees as was the case for a number of years.

Books Received.

Isalpa. The monthly journal of The Incorporated Society of Auctioneers and Landed Property Agents. Vol. II. No. 13. January, 1928. "Isalpa," 26A, Finsbury-square, E.C.2.

The Auctioneers' Press Guide, 1928, including a List of Bill-posters, and containing information dealing with the cost of inserting Property Advertisements, and other details necessary to the Auctioneer in over 1,000 newspapers published in Great Britain. Large crown 8vo. pp. xxxv and 85. Published at 5, Clement's Inn, W.C.2. 2s. net.

Ministry of Health Reports on Public Health and Medical Subjects. No. 45. The Co-ordination of the Public Health Services in the Counties of Essex, Hampshire, Gloucester and West Sussex. JAMES PEARSE, C.B.E., M.D. Paper. Medium 8vo. pp. 20. H.M. Stationery Office. 6s. net.

The Scottish Law Review and Reports of Cases in the Sheriffs' Courts of Scotland. Vol. 44. No. 517. January, 1928. pp. 44 and (Reports) 34. Wm. Hodge & Co., Ltd., 34/36, North Frederick-street, Glasgow, and 12, Bank-street, Edinburgh. 2s. 6d. net.

Ministry of Health Report of the Departmental Committee on the Superannuation of Local Government Employees. Paper. Medium 8vo. pp. 99. H.M. Stationery Office. 2s. net.

The Canadian Bar Review. Vol. V. No. 9. November, 1927. With which are The Canada Law Journal and The Canadian Law Times. Edited by CHARLES MORSE, K.C., D.C.L. (Copyright by The Canadian Bar Association). pp. xx and 639 to 714. The Carswell Co., Ltd., 145, Adelaide-street, W., Toronto. 75c. net (monthly).

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will—Construction—Subsisting Gift to Issue—Whether Grandchildren take.

Q. 1118. A by her will gave all her property to her trustees "upon trust to convert the same into money and divide the moneys arising from such conversion between all my brothers and sisters who are living at my decease equally, share and share alike, the issue of any brother or sister of mine who may have died in my lifetime leaving issue to take in equal shares as between themselves, the share to which his, her or their parent would have been entitled if living." A outlived all her brothers and sisters, and at the time of her death there were children of brothers and sisters living and also grandchildren of brothers and sisters. Having regard to the word "issue" contained in the will do the grandchildren take their parents' shares, or is the estate divisible only amongst the children of brothers and sisters?

A. The rule will be found in *re Timson*, 1916, 2 Ch. 362, following *Sibley* v. *Perry*, 1802, 7 Ves. 522. Under it grandchildren do not take, unless there is some indication otherwise in the will.

Settled Land—Death of Tenant for Life—Special Administrator—Title.

Q. 1119. Referring to the answer to *Q.* 992, *ante*, does not this answer overlook the fact that s. 3 of the S.L.A., 1925, has been amended by the L.P.A.(Amend.). Act, 1926, by the insertion of the words "not held upon trust for sale" after the first word "Land," of that section, and also the fact that s. 7 (1) of the S.L.A., 1925, only applies where "the land remains settled land"? Section 7 of the S.L.A., 1925, seems to cover every case except that of the death of a tenant for life, where an immediate binding trust for sale arises under the trust instrument. Paragraph 2 of the 2nd Sched. to the last-mentioned Act, seems only to apply where a conveyance has to be made to "a tenant for life or statutory owner." Section 13 of the Act no doubt creates a difficulty, but would not the exercise of the trust for sale be a disposition within the trustees' "powers under" the trust instrument?

A. The answer criticised was given with full consideration of the section mentioned above, and also of s. 7 (3) of the S.L.A., 1925, which in fact does expressly cover the case of land held on trust for sale after the death of the tenant for life. It now needs modification, however, not in respect of the above reasons, but because, since it was published, *Bridgett and Hayes Contract*, 1927, 71 Sol. J., p. 910, is authority that in the circumstances stated in *Q.* 992 the general and not the special representatives are entitled to the grant. But the fact that the grant is necessary is there confirmed and emphasised.

Contributory Mortgage—Sub-mortgage by Deposit of Deeds by some Mortgagees—Effect.

Q. 1120. Prior to 1926, six individuals advanced £6,000 in equal proportions on a contributory mortgage of freehold and leasehold properties. The mortgagor covenanted with each of the mortgagees to pay him £1,000. The properties were conveyed and assigned to the six mortgagees as joint tenants. The mortgage contains a covenant by each of the mortgagees with the others and other of them, at the request of the others or their respective personal representatives or assigns or any of them, to take or concur in any steps or proceedings necessary or proper for obtaining payment of the principal moneys or interest or any part thereof or exercising, enforcing or pursuing any powers, remedies or means for that purpose. Five of the mortgagees have agreed to sub-mortgage to X to secure payment of a debt due to X from Z. They have an interest in the payment of the debt. The sixth declines to join, but has no objection to X holding the deeds. How can this be effected? Reference to a precedent will be appreciated. It is surmised that the fact of there being more than four mortgagees is not an additional complication, as the limit of four joint tenants does not appear to apply where there was a larger number than four prior to 1926.

A. No legal estate in the mortgaged property can be created by some only of the mortgagees. Each of the five can, however, charge his equitable interest, and if X obtains the deeds he will be in the same position as a mortgagee by deposit of deeds was before 1926, see L.P.A., 1925, s. 13. It should be made plain by the memorandum covering the deposit, however, that the sixth mortgagee concurs in giving X all the rights of a mortgagee by deposit of deeds, and he (the sixth mortgagee) should sign it himself, otherwise his position would be ambiguous. Notice should be given to the mortgagors.

Contributory Mortgage—Whether some of Several Mortgagees can Sub-mortgage by Deposit of Deeds.

Q. 1121. With respect to your answer to *Q.* 1122, the point of the question is whether the five mortgagees can sub-mortgage. They can, of course, give some sort of equitable charge. Can they give such a charge by way of sub-mortgage? Furthermore, the sixth mortgagee is passive. He does not object to X holding the deeds, but he will not sign anything.

A. If the sixth mortgagee will not join in the memorandum covering the deposit, X cannot safely rely on the transaction operating as a sub-mortgage.

Enfranchised Land—Pre-1926 Mortgage by Conditional Surrender—Death of Mortgagee—Sale under Power by his Representatives—Fines.

Q. 1122. A copyhold tenant mortgaged property to a mortgagee and a conditional surrender was made by the mortgagor to him. The mortgagor died after 1925, and the mortgagee died before. The property has been sold by the personal representatives of the deceased mortgagee. It is contended on behalf of the lord that three fines are payable—(1) As on the admission of the deceased mortgagee; (2) As on the admission of the personal representatives of the deceased mortgagee; (3) As on the admission of the purchaser. On the other hand it is contended on behalf of the vendor that two fines only are payable—(1) As on the admission of the mortgagee only, it being contended that his personal representatives can sell without taking an admission, and (2) As on the admission of the purchaser?

A. It was held in *Re Heathcote* v. *Rawson*, 1913, 57 Sol. J. 374, that upon sale by unadmitted trustees with a power of sale they were entitled to nominate their purchaser to be admitted without being themselves admitted. *Sissons* v. *Chichester-Constable*, 1916, 2 Ch. 75, was decided on similar principles, and on these cases, and those cited therein, the opinion is here given that the contention of the vendor's advisers must prevail.

Vendor and Purchaser—Agreement for Mortgage to Vendor "Usual and Proper Clauses"—Whether Exclusion of Mortgagor's Statutory Power of Leasing.

Q. 1123. X recently sold an agricultural property comprising about 1,000 acres, and agreed to leave half the purchase

money on mortgage. The mortgage deed to contain a provision that so long as the interest is paid half-yearly within fourteen days after it becomes due the principal shall not be called in for three years, and such other usual and proper clauses as the vendor's solicitors may reasonably require. The draft mortgage contained a clause barring the statutory power of leasing except with the consent in writing of the mortgagee. The purchaser's solicitors object on the ground that it is not a usual and proper clause and does not come within the terms of the contract. Is that so?

A. In *Re Nugent* v. *Riley*, 1883, 49 L.T. 132, it was held that the exclusion of the mortgagor's statutory power of leasing was not a "usual" clause, and that the mortgagee was not entitled to it even under an agreement made before the statutory power existed. In *Farmer* v. *Pitt*, 1902. 1 Ch. 954, the clause discussed was the right of consolidation, but conveyancers' practice as to usual clauses is discussed on p. 960. In a note to a precedent of the clause suggested in Prideaux, 22nd ed., vol. II, p. 89, it is somewhat deprecated. On the whole, therefore, the opinion is here given that a judge would uphold the contention of the purchaser's solicitors.

Masonic Lodge—Charity—Several Trustees—T.A., 1925, s. 34.

Q. 1124. The members of a masonic lodge are purchasing property for their lodge purposes. The building will be used as a masonic lodge, and will be let occasionally. The purchase price will be paid out of the lodge funds and the profits of the letting will belong to the lodge. Is this purchase for a charitable purpose within the meaning of s. 34, sub-s. 3 (*a*) of the T.A., 1925? It is desired to have some fourteen or fifteen trustees, and if the sub-section is not applicable, we shall be glad of a reference to an appropriate precedent.

A. Primâ facie the purpose does not appear to be charitable, see *re Porter*, 1925, Ch. 746, and therefore s. 34 (2) of the T.A., 1925, applies. This being so, the land cannot be vested in fourteen or fifteen trustees, whatever precedent is followed.

Sole Executor—S.L.A. Trustee—Appointment of New Trustee—Before or After Vesting Assent?

Q. 1125. A testator who died in January, 1927, by his will appointed two persons executors and trustees, and appointed the same S.L.A. trustees. By a codicil he revoked the appointment of one of the trustees, leaving the other trustee sole executor and trustee, and confirming his will in all other respects. Testator devised certain real property upon trust for his daughter for life, and afterwards for his son absolutely. It is desired to appoint a new trustee of the will. The point now is as to whether the executrix should assent to the vesting of the property in herself as tenant for life under S.L.A., 1925, s. 6, and that she should then execute an appointment of an additional trustee to act with her or whether the better and more practical course would be to have the appointment of new trustees made first to be followed by the vesting assent vesting the property in the life tenant, otherwise it would appear necessary to have a further vesting assent by the two trustees to put the title in order. It seems to be suggested in the Act that there should be two trustees to execute a vesting assent: see S.L.A., 1925, s. 5 (1), which states that the vesting assent should contain (*inter alia*) the names of the persons who are the trustees of the settlement; also ss. 30 (3) and 110, which imposes upon a purchaser the duty of ascertaining that the persons stated to be the trustees of the settlement are the properly constituted trustees of the settlement?

A. The appointment should be made before the vesting assent: cf. Precedent in 3 Prid., p. 468.

Renunciation of Probate and Execution of Will—Disclaimer.

Q. 1126. Testator appointed A, B and C executors and trustees of his will and devised his estate to the trustees upon trust for sale. The will was proved in 1926 by B and C, A having renounced the probate and execution thereof. A has not otherwise disclaimed. B and C are desirous of retiring from the trust and of appointing A (who is entitled to the income of the estate for life) and the remaindermen (three) to be the new trustees. There is no special power of appointment under the will. Is A still a trustee of the will, and should he concur with B and C in appointing the three remaindermen in the places of B and C to act jointly with himself? Or was the renunciation by A a disclaimer of the trusts, in which case A need not be an appointing party?

A. It is assumed that A has not by his conduct or otherwise shown any intention to disclaim. Renunciation does not of necesssity amount to disclaimer. There is not sufficient lapse of time to constitute evidence of disclaimer. Until he does disclaim, A is still a trustee. In the circumstances A had better expressly accept the trust or disclaim, and then he will or will not, as the case may be, be a necessary appointing party.

If the trust property includes land, an assent is necessary to vest the legal estate in the trustees for sale.

Undivided Shares—Trustee for on 1st January, 1926—Sale by.

Debenture—Appointment of Receiver—Power of Sale.

Q. 1127. (1) Abstract of title shows legal estate to be vested in A in 1919. It was subsequently discovered that in 1920 A executed a deed poll whereby he stated that the purchase-money for the property was supplied by partners, A, B and C, out of partnership assets, and declared that he held and would continue to hold the property for the benefit of the partners to be dealt with as they should request. Does the legal estate vest in the partners under the L.P.A., 1925, or does it still remain in A as trustee, in which case it would appear to be necessary for A to appoint another trustee to act with him and to receive the purchase-money? Is this so?

(2) A lease was vested in a limited company, who issued debentures to two persons, A and B, the money to be repaid on three days' notice, and one of the conditions of the debentures was that on the appointment of a receiver as therein provided, such receiver should have power to sell and realise the assets of the company. A and B gave notice calling up their money, the company defaulted, and thereupon A and B appointed a receiver of the company's assets. A has contracted to sell the lease to another limited company. Can A assign the lease as mortgagee, or does he become a trustee for A and B, and in this case would it be necessary for A to appoint another trustee to act with him and to receive the purchase-money?

A. (1) The application of the L.P.A., 1925, 1st Sched., Pt. II, is negatived in the circumstances by para. 7 (*f*), and, the land being held in equity by A in trust for persons entitled in undivided shares, Pt. IV, para. 1 (1) (*b*), gives him a trust for sale. It is necessary under the T.A., 1925, s. 14 (1) (*a*), and the L.P.A., 1925, s. 27 (2) (see L.P. (Am.) A., 1926, Sched.), that another trustee should be appointed to receive the purchase-money. A purchaser will not be concerned with any request or mandate by the beneficiaries entitled to the proceeds of sale and income until sale.

(2) The answer to this question will depend upon the wording of the actual power given to the receiver in the debentures. The power of sale conferred by s. 101 (1) (i) of the L.P.A., 1925, can only be exercised by the person entitled to receive the mortgage-moneys, see s. 106 (1), but persons entitled to sell may delegate their powers by executing a power of attorney, unless fiduciary. The mortgagee's power of sale is not entirely fiduciary, see *Belton* v. *Bass, &c.*, 1922, 2 Ch. 449, pp. 465-6. A debenture-holder, however, usually has a mere equitable charge and not a legal mortgage, and so no power of sale. A company sometimes gives a receiver for a debenture-holder power when appointed to sell, and, if the debenture was executed after 1st January, 1926, it should be filed at the Central Office as a power of

attorney pursuant to the L.P.A., 1925, s. 125 (1). Unless the debentures constitute a clear legal mortgage or charge by way of legal mortgage, or unless the company has given a receiver appointed by the debenture-holders a clear power of attorney to sell, the court must be invoked under the L.P.A., 1925, s. 90 (1).

Obituary.

Mr. E. M. BROWNE.

Mr. Edward Montague Browne, solicitor, for many years senior member of the firm of Browne & Wells, of No. 2, St. Gile's Square, Northampton, passed away at his residence there, No. 21, The Drive, on Monday, the 16th inst., at the age of eighty-two. A son of The Rev. James T. Browne, M.A., the first Vicar of St. Edmund's, Northampton, he was admitted in 1866, and having spent a few years in a London office, joined Mr. Charles Britten in partnership in the business originally founded by the late Mr. Henry Hughes in 1805, but from 1872, when Mr. Britten retired, he carried on the practice alone. He was joined by Mr. John Haviland in 1893, and seven years later took into partnership Mr. G. C. Wells, but from 1905, when Mr. Haviland retired, the business has been carried on under its present name of "Browne and Wells." After more than half a century of hard and industrious work Mr. Browne retired in the autumn of last year from the practice he had done so much to build up. He took a great interest in all that concerned the progress and prosperity of Northampton, and in 1889 he was responsible for the formation of the Northampton Electric Light Company and became its first secretary, holding the office for upwards of thirty years. He was elected a director in 1907, a position he retained for nearly twenty years. A staunch Churchman, he will always be remembered for his untiring work on behalf of the Northampton Church Extension Society, of which he was secretary. Other appointments held by him included that of manager of the Northampton Savings Bank and auditor of the Architectural and Archæological Society for the Archdeaconries of Northampton and Oakham. He leaves five sons and one daughter, his wife having predeceased him nearly two years ago. One son, Mr. Harold St. John Browne, M.C., LL.B. (Lond.), solicitor, has been a partner in the firm since 1912.

Mr. H. C. TRAPNELL, LL.B.

A well-known Bristol solicitor, Mr. Henry Caleb Trapnell, died suddenly at his residence, 11, Manilla-road, Clifton, in the early hours of Saturday last, the 21st inst., from heart failure. Born on the 9th March, 1853, he was educated at Tulse Hill School and admitted in 1876. He practised in Bristol alone until 1923, when his son, Mr. Eliot Trapnell, B.A., LL.B. (Cantab.), joined him in partnership. He was President of the Bristol Law Society in 1908 and for many years served on the Legal Education Committee. For a long time he acted as Hon. Secretary of the Bristol Branch of the National Society for the Prevention of Cruelty to Children, resigning in 1905. He was prominent in Congregational Church work in Bristol, acted as Hon. Secretary of the Park Row Industrial School, and was also a member of the governing body of the Western College; but perhaps his name will be best remembered for his devotion to the work of the Bristol Benevolent Institution, a great Bristol Charity founded in 1869 by his father (Mr. Caleb Trapnell), on whose death in 1903 he assumed the duties of Secretary. Mr. Trapnell was a member of The Law Society. H.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Correspondence.

Coote on Mortgages, 9th Edition.

Sir,—The preface to this book is dated May, 1927, but if you look at the Table of Statutes you will find that the last statute cited is 1925, 15 Geo. V, ch. 49. Surely the learned editor of Coote must have heard of the Law of Property (Amendment) Act, 1926, and your reviewer might have noted that the provisions of the Act of 1926 are not reproduced in a book, the preface of which is dated May, 1927.

London, E.C.2. E. T. Hargraves.
23rd January.

[The reviewer might also have noted that according to the 9th edition of Coote (p. 196), "a mortgage of an advowson is still permitted by The Benefices Act, 1898, s. 1 (7)," the provision of The Benefices Act, 1898, (Amendment) measure, 1923, s. 4 having been overlooked.—Ed., *Sol. J.*]

"Effect of a Foreign Judgment." *Jacobson* v. *Frachan.*

Sir,—The above-mentioned case to which reference is made in your "Current Topics" of 21st January, 1928 (p. 38), is of interest from many points of view.

We would mention, in particular, the dictum of the Master of the Rolls that—

> "The courts (i.e., the English Courts) had made it a rule of comity with foreign nations to accept the judgments of their courts of competent jurisdiction."

It is, however, a fact worthy, we think, of note that, although the English courts accept judgments rendered by French courts of competent jurisdiction in the absence of fraud and providing the defendant has had due notice of the proceedings, the French courts do not accept judgments rendered by the English courts as *res judicata*.

In theory the French courts have the right to examine a foreign judgment on the merits (*au fond*) in the absence of any diplomatic treaty.

In practice, the French courts as a rule inquire into the merits of judgments rendered by the English courts, so that an English judgment has comparatively little value from the point of view of execution in this country, and to all intents and purposes the case is tried *de novo* by the French courts.

Hence, the French view of comity of nations is diametrically opposed to the English view, and there is no reciprocity.

Paris (8e). Barclay, Baerlein & Mordan.
23rd January, 1928.

The Attorney-General and Fusion.

Sir,—At the recent annual meeting of the Bar Council the Attorney-General referred to the new joint regulations enabling members of either branch of the profession to pass almost immediately from the one branch to the other, and incidentally to "fusion," as if this question were associated with simple inter-professional transfer.

"Transfer" has nothing whatever to do with "fusion." Any former member of either branch in his new capacity now, as in the past, will have to practise either as a barrister or as a solicitor, in accordance with the present custom or rules.

"Fusion" means that all lawyers will be solicitors and barristers too; in fact, so that any one lawyer can, if he chooses, practise as a solicitor or as an advocate, that is, he will be able to act in both capacities at the same time in any court, just as his confrères do in practically all other countries and in the dominions.

In this way "fusion" is quite distinct from transfer, and it is now realised by an increasing number of persons as a matter of vital importance to the public, whose protest against the present unnecessarily high cost of litigation has been revived recently and is becoming more clamorous year by year.

Fusion, in short, will reduce costs of litigation by avoiding considerable duplication of effort in almost every case, and triplication in many cases, as every experienced practitioner knows.

There are growing indications of the better understanding by the public of this fact.

Specialists there will be always, but they will fit themselves into the new scheme of things as easily as do men in the medical profession, that is, when special experience and aptitude justify.

As a sign of the times, it is well the profession should watch the Institute of Arbitrators, claiming to supplement by private enterprise the advantages of State justice.

This institute held its first annual dinner in London recently, when one of its functions was stated to be " to gather together men able and experienced in business arbitration and to provide education for such other persons as join the Institute and show that they have the capacity to become efficient and capable Arbitrators." The institute intends, in fact, to make business men understand that arbitration can be used successfully as a means of settling disputes both more amicably and more speedily than it is possible to do to-day.

In this connexion it is interesting to note the first President of the institute is a chartered accountant of good position.

Lincoln's Inn, HARVEY CLIFTON.
25th January.

NOTES OF CASES.

Privy Council.

(Present : Lords Buckmaster, Blanesburgh and Darling.)

Hong-Kong and Shanghai Banking Corporation *v.* **Lo Lee Shi.**
19th January.

BANK NOTE—MUTILATED—NUMBER ACCIDENTALLY DEFACED—LIABILITY OF BANK—BILLS OF EXCHANGE ORDINANCE, 1885, s. 64.

This was an appeal from the Supreme Court of Hong-Kong relating to the liability of the appellant bank to pay one of its bank notes which had been accidentally mutilated and partly destroyed. The bank refused payment mainly on the ground that the number was missing. The Bills of Exchange Act, 1882, s. 64, was reproduced for Hong-Kong in the Bills of Exchange Ordinance, 1885, s. 64. The question was whether the bank was liable on a note the number of which had been accidentally defaced. The case of *Suffell* v. *Bank of England*, 9 Q.B.D. 555, was referred to. The respondent was not represented.

Lord BUCKMASTER, in delivering their lordships' judgment, said that the point that arose for decision was singularly free from authority, and he thought the *Suffell Case*, apart from certain *dicta*, was of little assistance. The 64th section of the Bills of Exchange Ordinance did not apply to an alteration due to pure accident, and the fact that the change was accidental in itself negatived the possibility of assent. It was therefore necessary to determine this case apart from the Ordinance, and in this connexion he did not think the question of negligence played any part. It was the absence of the number of the note on which the appellants relied, and that was no part of the operative portion of a bill of exchange or promissory note, although its alteration was material in the case of a Bank of England note owing to its special features. Their lordships did not think that beyond their decision as to the meaning of the Ordinance it was possible to lay down any general principles, but it was possible by means of the note and verbal evidence to establish a claim against the bank. The appeal would be dismissed.

COUNSEL : *Jowitt*, K.C., and *J. Forster*.

SOLICITORS : *Stephenson, Harwood & Tatham*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Inland Revenue Commissioners *v.* **Yorkshire Agricultural Society.** 10th November.

REVENUE—INCOME TAX—CHARITY—EXEMPTION—AGRICULTURAL SOCIETY—INCOME OF INVESTMENTS—" ESTABLISHED FOR CHARITABLE PURPOSES ONLY "—INCOME TAX ACT, 1918, 8 & 9, Geo. 5, c. 40, s. 37 (1) (*b*).

Appeal from a decision of Rowlatt, J., who, in reversing a decision of the Special Commissioners, held that the Yorkshire Agricultural Society was not entitled to claim exemption as being a charity from income tax on the income and dividends of its invested funds for the year ending 5th April, 1923. The society was founded at York in 1837, mainly for the purpose of promoting and holding an annual agricultural show. At present the principal objects of the society, besides the holding of the show, were the improvement of live stock and poultry ; of machinery and appliances used in agriculture ; and of agricultural education and scientific research. The minimum annual subscription was £1, and there were at present over 3,000 members. A member, as such, was entitled to free admission to the annual show, to reserved tickets at reduced rates, to reduced fees on exhibits and to certain other minor privileges, both in connexion with the annual show and otherwise. The income of the society was derived from entry fees and gate receipts, local subscriptions for prizes, interest on investments and subscriptions of members. Any excess of income over expenditure, which in 1923 amounted to £2,131, was invested, and, in the event of the show resulting in a loss, the loss was met by a sale of investments. The Society appealed.

THE COURT (Lord Hanworth, M.R., Atkin and Lawrence, L.JJ.) allowed the appeal. The society was established and had been carried on for the promotion of agriculture, which was an object not merely beneficial, but vitally necessary to the community, and therefore it was, as the Commissioners had found, a body of persons established for charitable purposes only within the fourth class of charities, as defined by Lord Macnaghten in *Income Tax Commissioners* v. *Pemsel*, 1891, A.C. 531, 583. The fact that the society was not incorporated, and that its members enjoyed special privileges, did not alter the general nature and purpose of the society as a whole ; many charities, such as hospitals, gave privileges to their subscribers. The society was not a mere member's society, but an established charity. The decision of Rowlatt, J., must be reversed.

COUNSEL : *Gavin Simonds*, K.C., and *Raymond Needham ; The Solicitor-General* (Sir T. Inskip, K.C.), *J. H. Stamp*, and *R. P. Hills*.

SOLICITORS : *Trower, Still & Keeling ; Solicitor of Inland Revenue*.

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

Royal Exchange Assurance *v.* **Hope.**

No. 1. 29th November and 9th December.

INSURANCE—POLICY ON LIFE FOR ONE YEAR—ASSIGNMENT BY ASSURED TO THIRD PARTY—POLICY EXTENDED FOR THREE MONTHS—DEATH OF ASSURED—ASSIGNEE ENTITLED TO POLICY MONEY.

Appeal from a decision of Tomlin, J.

By a policy dated 13th August, 1925, S. Barker insured his life for a period of one year ending 31st July, 1926, and shortly afterwards assigned the policy to the defendant absolutely. In July, 1926, Barker, who was then abroad, cabled to his solicitors accepting terms offered to him for an extension of the policy for a period of three months, and the policy was duly indorsed with a memorandum to that effect, and a receipt given for the premium. Barker died on 1st October,

1926. The plaintiffs were executors of his will and claimed, as against the defendant, that his estate was entitled to the policy money. Tomlin, J., gave judgment for the defendant on the ground that the deceased in negotiating an extension of the term of the policy did so as a trustee for the defendant. The plaintiffs appealed.

The COURT (Lord Hanworth, M.R., Sargant and Lawrence, L.JJ.) delivered considered judgments dismissing the appeal. It was impossible to hold that the insurance for the later three months was a new and separate contract. There was no new policy and no fresh stamp, but the time limit of the existing policy was extended for three months. There was no intention shown to rescind the original contract. The defendant was therefore entitled to the policy money on the death of the deceased before the expiration of the extended period. That view made it unnecessary to consider the grounds on which Tomlin, J., had decided in favour of the defendant, but that view could be adopted, if necessary.

COUNSEL: *S. L. Porter*, K.C., and *MacGillivray; Archer*, K.C., and *Henry Johnston.*

SOLICITORS: *Parker Garrett & Co.; Stilgoes & Co.*

[Reported by H. LANGFORD-LEWIS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

France *v.* **J. Coombes & Co.** Mackinnon, J. 1st December.

EMPLOYEE—"WORKING MANAGER"—BOOT REPAIRER—OTHER DUTIES—TRADE BOARDS ACTS—MINIMUM RATES FIXED—CLAIM FOR MINIMUM RATES FOR OTHER DUTIES—TRADE BOARDS ACT, 1918, 8 & 9 Geo. 5, c. 32, s. 8.

A "working manager" whose duties under a three years' agreement consisted partly of repairing boots and shoes, and partly in attending to other work, of a managerial character, on the premises of his employer, received payment for his repairing work in accordance with the minimum rates applying to that trade under the Trade Boards Acts. Upon a claim by the employee under s. 8 *of the Trade Boards Act,* 1918, *for a wage based on the fixed minimum for the whole of the time he was engaged on his employers' premises, he alleged that* £363 *was due to him.*

It was held, that during part of the time he was employed "for some purpose unconnected with his work (as a boot repairer entitled to the minimum rate) and other than that of waiting for work to be given him to perform," and so was not entitled to the fixed minimum rate in respect of his duties which were not boot and shoe repairing.

MACKINNON, J., said: Under the section the plaintiff was to be "deemed to have been employed" on the work of boot repairing during the whole time he was on the defendants' premises unless the defendants proved that "he was so present for some purpose unconnected with his work and other than that of waiting for work to be given him to perform." It was established by the defendants that the plaintiff was on their premises for some purpose unconnected with that work, namely, his other duties. The defendants were also entitled to say that the plaintiff was at their shop for a purpose "other than that of waiting for work to be given him to perform." In his opinion, on the facts proved, s. 8 was not decisive in the plaintiff's favour. Judgment was given for the defendants, with costs.

COUNSEL: *Schiller*, K.C., and *Malcolm Hilbery*, for the plaintiff; *Stuart Bevan*, K.C., and *Sir Robert Aske*, for the defendants.

SOLICITORS: *Church, Adams & Co.*, for *Cobbett, Wheeler and Cobbett*, Manchester; *T. D. Jones & Co.*, for *Topham and Phillips*, Harrogate.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

SOLICITOR'S CHRISTIAN NAME.

Notice is given in the *London Gazette* that Sir John Hughes Rutherford, Bt., LL.B., solicitor, Liverpool, has by deed poll abandoned the use of his second Christian name of Hughes, and has assumed the Christian name of Hugo.

Probate, Divorce and Admiralty Division.

Barkwell *v.* **Barkwell.**

Lord Merrivale, P. 29th and 30th November and 20th December, 1927.

PROBATE—REVOKED WILL—ADMISSIBILITY OF DECLARATIONS BY TESTATOR AS TO CONTENTS.

In this probate action questions were raised, *inter alia*, as to the admissibility of *ex post facto* declarations of the testator concerning various wills said to have been made by him after the execution of a Will in 1891 set up by the plaintiff. The defendant contended that the will of 1891 had been revoked by subsequent wills culminating in a will of 1925, and that there was an intestacy.

Lord MERRIVALE, P., said in the course of his judgment that two well-known principles had to be borne in mind. Inasmuch as the Wills Act, 1837 denied all effect to any will unless it was made in writing and executed in the prescribed manner, that statute plainly ought not to be evaded by the admission of parol statements after the event to prove execution. Under the common law, however, which since 1857 had governed proceedings in that jurisdiction, a fact which was in issue might, subject to the provisions of the Wills Act, be proved by every kind of lawful evidence, provided that it be the best available. To exclude a subsequent statement of a testator as to the fact of the execution of a will was one thing. To exclude or admit his statements as to the contents of a writing no longer in being was another. It had been contended by the plaintiff's counsel that evidence was not admissible as to the contents of a will that had been revoked. There could be no doubt as to the true rule. A question of fact was in dispute, namely whether the will of 1925 contained a revocation clause. The document could not be found and presumably had been destroyed by the testator. Apart from the statute the evidence required was "the best evidence, or rather the highest kind of evidence, of which the nature of the case admits." All that the Wills Act really required was that he should see whether what the defendant sought to do was to revive the will of 1925. In his judgment what the Defendant sought was to show that when the testator attached his signature to the document of 1925, it was within the terms of s. 20 of the Wills Act a "will or codicil . . . or some writing declaring an intention to revoke." The printed form upon which the testator wrote in 1925 contained a revocation clause in absolute terms. The defendant was entitled to judgment.

COUNSEL: *D. Cotes-Preedy*, K.C., and *R. Bush James*, for the plaintiff; *Sir Patrick Hastings*, K.C., *R. F. Bayford*, K.C., and *Walter Frampton*, for the defendant.

SOLICITORS: *Barrow, Rogers & Nevill; Reid Sharman and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Dewe *v.* **Dewe. Snowdon** *v.* **Snowdon.**

Lord Merrivale, P., and Bateson, J. 12th and 18th January.

HUSBAND AND WIFE—SEPARATION DEED—COVENANT TO MAINTAIN—BANKRUPTCY—WIFE'S PROOF ON CAPITALISED CLAIM—SUMMONS FOR WILFUL NEGLECT TO MAINTAIN—COMMON LAW STATUS OF MARRIED WOMAN.

These two appeals from courts of summary jurisdiction raised questions as to the effect of a husband's bankruptcy on a covenant to pay money by way of maintenance in a separation deed where the wife had proved in the bankruptcy on a capitalised claim and had accepted a final dividend; and as to the revival of the wife's common law right to maintenance on the failure of the deed, so as to permit of her obtaining an order on the ground of wilful neglect to provide reasonable maintenance.

Dewe *v.* Dewe.

In this case the husband had obtained his discharge and was in substantial practice as a dentist. The Metropolitan Magistrate dismissed the wife's summons on the ground that the effect of the Bankruptcy Act, 1914, was to put a husband who had obtained his discharge in the same position as if he had performed his contract.

Lord MERRIVALE, P., in the course of a written judgment, said: Reliance was placed in the husband's behalf on the numerous cases which established long since the right of a wife, situated as the present appellant was, to prove in bankruptcy for the whole value of an agreement for payments by her husband in respect of maintenance, and on cases which establish that after bankruptcy a wife so situated has no cause of action under an agreement for maintenance. (His lordship referred to *Ex parte Bates*, 11 Ch. D. 914, and *Victor* v. *Victor*, 1912, 1 K.B. 247.) The various authorities . . . do not, however, deal with the question of marital right here involved, and the amplitude of some of the language used in some of the cases may be misleading if it is considered without due regard to the subject matter which was then under consideration. The practical objection to the conclusion sought to be reached is that it would convert an agreement to live apart with an allowance for maintenance into an agreement to live apart without provision for maintenance. Though the juristic capacity of married women has been, broadly speaking, equalised in recent years with that of other citizens, the changes made have not eliminated some of their privileges. The right of a wife to maintenance as against her husband is not contractual in its nature. It is an incident under the common law of the status or estate of matrimony. One of the most familiar illustrations of the wife's right to maintenance is her power to pledge her husband's credit for necessaries, and very often in actions of debt for necessaries supplied to married women living apart from their husbands under agreements for maintenance this liability of the husband has been found to depend upon an inquiry whether the husband had paid as agreed. In *Ozard* v. *Durnford*, Selwyn N.P. 13th ed., 128, Lord Mansfield said: "If upon separation the husband agrees to make her a sufficient allowance and pays it the husband is not liable." Another expression of the obligation inherent in the marriage tie is the liability of the husband to reimburse the costs of the maintenance of his wife which may fall on any poor law authority. An agreement for maintenance suspends the common law right of the wife, but does not annul it. Without some express provision to the contrary that right would become operative in its entirety upon a return of the parties to cohabitation. From the bankruptcy of the husband there ceased to be in existence any agreement of his providing for the discharge of his common law obligation, or capable of being set up in answer to the wife's claim thereunder. The equitable right of the husband to set up the agreement made in limitation of the primary right is gone. (His lordship referred to *McQuiban* v. *McQuiban* 1913, P. 208.) Besides raising the defence founded on the bankruptcy the husband relies on the wife's action in making proof of a claim under the agreement and receiving a dividend from the estate. The receipt of the dividend is said to operate by way of composition, novation or satisfaction under a substitutional agreement. But the claim and the receipt of dividend were not incidents in a transaction between husband and wife. The husband's estate came to be distributed according to law, and the wife having an agreement for certain payments which gave right of proof, proved upon it without any new bargain with the husband. Whether she proved or not the husband's liability under the deed went upon bankruptcy. If there is the appearance of inconsistency, it arises from the statutory provisions governing bankruptcy. It is proper therefore that the case should go back to the magistrate, that he may determine the extent of the contribution which the husband should be ordered to make.

BATESON, J., concurred.

COUNSEL: *Fox-Andrewes*, for the appellant wife; *G. G. Honeyman*, for the respondent husband.

SOLICITORS: *Lawrence Jones & Co.*; *H. W. Clarkson*, for *Herbert Simpson, Son & Bennett*, Leicester.

Snowdon *v.* Snowdon.

In this case the husband was an undischarged bankrupt. The justices made an order for the payment of 12s. 6d. a week. His Lordship said that the above judgment applied, and the appeal would be dismissed. Bateson, J., concurred.

COUNSEL: *H. B. Durley Grazebrook*, for the appellant husband; *H. W. Barnard*, for the respondent wife.

SOLICITORS: *Upton, Britton & Lumb*, for *Wilmshurst and Kaye*, Huddersfield; *Firth & Co.*, for *Cartwright & Fieldhouse*, Huddersfield.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Middle Temple.

The Master Treasurer (The Marquis of Reading) and The Masters of The Bench of The Middle Temple entertained at dinner on Wednesday—being the Grand Day of Hilary Term—the following guests: His Excellency The American Ambassador, The Right Hon. Lord Hewart (Lord Chief Justice of England), Viscount Erleigh, M.C., Viscount Younger of Leckie, The Bishop of Southwark, Lord Hardinge of Penshurst, K.G., Lord Chalmers, G.C.B., Lord Ashfield, Lord Merrivale, Sir Herbert Samuel, G.C.B., Sir Harry Goschen, Bart., K.B.E., Field-Marshal Sir Claud Jacob, G.C.B., Sir William Vincent, G.C.I.E., Sir Frank Dicksee, K.C.V.O. (President of The Royal Academy), Sir Roderick Jones, K.B.E., Mr. E. C. Grenfell, M.P., Mr. J. M. Gathie, M.P. (Chairman of The London County Council) and The Revd. The Reader. The following Masters of the Bench were present: Mr. English Harrison, K.C., Sir Robert A. McCall, K.C.V.O., His Honour Judge Ruegg, K.C., Sir W. E. Hume-Williams, K.C., M.P., Mr. B. C. Aspinall, K.C., Lord Shaw of Dumfermline, His Honour Judge Sir Alfred Tobin, K.C., Mr. W. J. Waugh, K.C., B.C.L., Mr. Chas. F. Lowenthal, K.C., Mr. St. John G. Micklethwait, K.C., Sir Lynden L. Macassey, K.C., Mr. Heber L. Hart, K.C., LL.D., Mr. J. B. Matthews, K.C., The Hon. Mr. Justice Finlay, K.B.E., Mr. Bruce-Williamson, Mr. H. C. S. Dumas, Mr. Alexander Neilson, K.C., and Mr. S. J. Bevan, K.C. The Master of the Temple was unavoidably prevented from being present owing to a family bereavement.

Gray's Inn.

Friday, the 20th inst., being the Grand Day of Hilary Term at Gray's Inn, the Treasurer (Master R. E. Dummett) and the Masters of the Bench entertained at dinner the following guests: His Excellency The Austrian Minister, The Right Hon. Lord Clifford of Chudleigh, The Right Hon. Lord Carson, The Right Hon. Sir John Eldon Bankes, G.C.B., The Hon. Mr. Justice McCardie, Major Sir William Orpen, K.B.E., R.A., R.I., Sir Edwin Cooper, Sir Felix Pole, The Dean of St. Paul's (The Very Rev. W. R. Inge, C.V.O., D.D.), Mr. J. A. Hawke, K.C., M.P., and Mr. Percival Clarke. The Benchers present in addition to the Treasurer were: Sir Miles Mattinson, K.C., Mr. Thomas Terrell, K.C., The Right Hon. Sir Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Arthur E. Gill, The Right Hon. Sir Richard Atkin, Sir Montagu Sharpe, K.C., His Honour Judge Ivor Bowen, K.C., Mr. William Clarke Hall, The Right Hon. Sir Hamar Greenwood, Bart., K.C., M.P., The Hon. Vice-Chancellor Courthope Wilson, K.C., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, with the Chaplain (The Rev. W. R. Matthews, D.D.) and the Under-Treasurer (Mr. D. W. Douthwaite).

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, 16th inst., Mr. F. B. Guedalla in the chair. Mr. Tookey opened "That in the opinion of this House the case of *Macnaghten* v. *Douglas*, 1927, 2 K.B. 292, was wrongly decided." Mr. Ross, in the absence of Dr. Burgin, opposed. There also spoke Messrs. Tebbutt, Guedalla, Bell and Butcher. The opener having replied, the motion was put before the House and carried by twelve votes.

Law Students Debating Society.

At a meeting of the Society, held at The Law Society's Hall, on Tuesday, the 24th inst. (Chairman, Miss D. C. Johnson) the subject for debate was: "That in the opinion of this House the Gaming Acts should be repealed."

Mr. R. D. C. Graham opened in the affirmative; Mr. H. E. Crane in the negative.

The following members also spoke: Messrs. G. Thesiger, S. H. Bates, E. F. Iwi, H. W. Bailey, C. F. S. Spurrell, H. Shanly and W. S. Jones.

The opener having replied, the motion was carried by six votes. There were twenty members and two visitors present.

Parliamentary News

THE TOTALISATOR.

Mr. Walter Guinness, Minister for Agriculture, addressing a meeting at Newmarket on Monday last, said that during the forthcoming Session of Parliament a measure would be introduced to legalise the Totalisator. It would not be a Government measure, but the Government would take the opinion of the House of Commons.

Legal Notes and News.

Honours and Appointments.

Mr. WILLOUGHBY BULLOCK (President of a District Court, Palestine), has been appointed Chief Justice of the Island of St. Vincent.

Mr. KULWANT SAHAY, Pleader, and Mr. THOMAS STEWART MACPHERSON, C.I.E., Indian Civil Service, have been appointed Judges of the High Court of Judicature at Patna, additional to the number of permanent Judges in the Court.

Sir HAROLD G. DOWNER, LL.B., C.C., solicitor, has been elected a Warden of the Gold and Silver Wyre Drawers' Company. Sir Harold Downer was admitted in 1896 and is the senior member of the firm of Downer & Johnson, 426, Salisbury-house, London Wall, E.C.2.

Mr. CHARLES PAUL TAYLOR, B.A. (Cantab.), solicitor, has been appointed Clerk to the Justices of the Thornbury Petty Sessional Division of Gloucestershire in succession to Mr. John G. Wicks, who has resigned. Mr. Taylor was admitted in 1907, is a member of the firm of Crossmans & Co., of No. 17, John-street, Bristol, and Thornbury, and also holds the appointments of Deputy Registrar of the County Court, Joint Clerk to the Governors of the Thornbury Grammar School, and Deputy Superintendent Registrar of Births, Deaths and Marriages.

Mr. HAROLD BECK WILLIAMS, LL.D. (Lond.), solicitor, has been appointed Deputy Clerk of the Peace and of the County Council of Surrey. Dr. Williams was admitted in 1912 and had held the position of Assistant Solicitor to the Surrey County Council since 1925.

Lt.-Col. LOVEL FRANCIS SMEATHMAN, solicitor, of the firm of Lovel Smeathman & Son, has been appointed Clerk to the Guardians and Rural District Council of Hemel Hempstead in succession to his father, Mr. Lovel Smeathman. Colonel Smeathman was admitted in 1910.

Mr. William Rupert, Kew, solicitor, deputy town clerk of Northampton, is unanimously recommended by the Finance Committee of the Town Council for appointment as town clerk to succeed Mr. Herbert Hankinson, who will retire at the end of March. Mr. Kew was admitted in 1905.

Professional Announcements.

(2s. per line.)

Messrs. ERNEST BEVIR & SON, Solicitors, 4, York-buildings, Adelphi, W.C.2, 18/19, Brent-street, Hendon, and Mill Hill, have taken into partnership Mr. LESLIE F. ATTWATER, who has been associated with the firm for the past five years. The name of the firm will remain unchanged.

Mr. ARTHUR HOWLETT, solicitor, has retired from the firm of Wilkinson, Howlett, and Moorhouse, of 14 Bedford-street, Covent Garden, W.C.2, and 14 Church-street, Kingston-on-Thames, from the 31st ult., after nearly sixty-two years' continuous practice. The continuing partners, Mr. E. P. Moorhouse and Mr. S. C. T. Littlewood, have taken into partnership Mr. FRED PARMENTER, who, for some time, has been associated with them at their London office. The name of the firm will remain unchanged.

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Messrs. BREEZE, WYLES & RAGGETT, solicitors, announce that they have moved into new offices recently erected next to the Conservative Club, and that in future their address will be Eleanor-road, Waltham Cross (Herts). The telephone number (Waltham Cross 149) will remain unchanged.

SERIOUS TAX APPEAL DELAYS.

Complaints from the bench of delay in the hearing of income tax appeals have lately been frequent. They were added to last week by Lord Justice Scrutton, presiding in a Court of Appeal, which had before it a matter referring to the tax for 1916-17-18, the appeal being from an order of Mr. Justice Rowlatt made on 18th March, 1925, in *Balfour* v. *Mace*.

Lord Justice Scrutton said, when liability for income tax for 1916-17-18 was being decided in 1928, ten years after the last assessment, and there were unmistakable suggestions that there was yet a stage to come before the final liability would be assessed, he thought the only way in which the courts could correct to some extent what seemed to be quite unnecessary delay was by calling attention to the dates on every occasion when such a matter came before them. Having mentioned the dates in the cases before the Court, his lordship further observed that there was obviously something wrong in a system which took the Special Commissioners three years to arrive at a finding of fact which was stated in a line and a half. The delay was partly due to the fact that the Commissioners would not take the responsibility of stating a case, but allowed the parties by agreement to state what the case was to be, with the result that diplomatic moves in various coloured inks took place between the parties, which accounted in this case for three years. The delay in this case was also partly due to the fact that the Court of Appeal was presided over by a judge (the Master of the Rolls) who was counsel in the earlier stages of the proceedings.

Court Papers.

Supreme Court of Judicature.

Date.	ROTA OF REGISTRARS IN ATTENDANCE ON: EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. JUSTICE EVE.	Mr. JUSTICE ROMER.
Monday Jan. 30	Mr. Ritchie	Mr. Hicks Beach	Mr. Hicks Beach	Mr. More
Tuesday .. 31	Bloxam	Synge	*Bloxam	Hicks Beach
Wed. Feb. 1	Jolly	More	More	Bloxam
Thursday . 2	Hicks Beach	Ritchie	*Hicks Beach	More
Friday 3	Synge	Bloxam	Bloxam	Hicks Beach
Saturday .. 4	More	Jolly	More	Bloxam
	Mr. JUSTICE ROMER.	Mr. JUSTICE ASTBURY.	Mr. JUSTICE TOMLIN.	Mr. JUSTICE CLAUSON.
Monday Jan. 30	Mr. Bloxam	*Mr. Ritchie	Mr. Synge	Mr. Jolly
Tuesday .. 31	*More	Synge	*Jolly	Ritchie
Wed. Feb. 1	*Hicks Beach	*Jolly	*Ritchie	Synge
Thursday . 2	*Bloxam	Ritchie	*Synge	Jolly
Friday 3	*More	*Synge	Jolly	Ritchie
Saturday .. 4	Hicks Beach	Jolly	Ritchie	Synge

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

The Midland Bank.

At the ordinary general meeting of the shareholders of the Midland Bank, Limited, which was held at the Cannon Street Hotel on Tuesday, the 24th inst., the Chairman, The Rt. Hon. Reginald McKenna, P.C., struck an optimistic note as to the trade outlook. He succeeded in explaining very lucidly many abstract monetary questions to which the greater part of his address was devoted, in the course of which he said that before the war the Central Banks adopted a purely passive attitude in the control of credit, for they allowed the movement of gold into or out of a country to regulate the internal supply of money. If gold flowed in freely, credit and currency expanded and prices rose. On the other hand, if gold flowed out credit and currency contracted and prices fell. In other words, the current course of world prices was determined mainly by the supply of monetary gold. It was not until after the war that there developed a new consciousness of the power of the Central Banks to control credit and the necessity for exercising it. This became a matter of importance because, whereas paper credits had expanded enormously during the war, the supply of gold had not, while approximately one-half of it found its way into the hands of one country. The International Economic Conference at Genoa in 1922 was evidently impressed by the danger of a scarcity of gold and the financial Commission established there made recommendations to economise its use. One of the main suggestions was that, instead of reverting to the pre-war system, under which each country held its own gold stock, "gold exchange standards" should be adopted by most countries, leaving only a few to hold the ultimate metallic reserves for the entire world. Mr. McKenna deplored the fact that the suggestions of the Commission for the adoption of gold exchange standards had been widely departed from. The actual position, however, was that most, if not all, of those countries which have returned to the gold standard did not revert to the pre-war system, but set up what is known as the gold exchange standard—that is to say, the banks of issue undertake to pay their notes either in gold or gold exchange—i.e., the currency of a gold standard country. Most, if not all, countries in practice seek to confine the use of gold to external payments. But though most countries have adopted the Genoa recommendations, they have nevertheless found that, while in some respects gold exchange is as good as gold, it is not quite the same thing, and a few of them have been replacing their gold exchange with the actual metal. Mr. McKenna objected to this, because he strongly holds the view that in a gold standard country gold need no longer be the controlling factor in the supply of money. The experience of the United States, he declared, had proved this: better control could be exercised by the Central Bank regulating its loans in one form or another, irrespective of gold movements. The enormous war and post-war accumulation of gold in America, he argued, has proved disastrous to the American price level. Mr. McKenna then explained how the Federal Reserve Bank authorities contrived to avoid this. During the active period of the gold inflow it was prevented from functioning as a basis for credit to the full amount, while during the period of outflow, which occurred last year, no contraction of credit occurred; on the contrary, there was an expansion of bank credit. Certainly in recent years the American authorities had achieved a high degree of success in pursuing a policy of price stability in spite of gold movements of unprecedented magnitude. Because of this active policy of controlling the volume of credit, irrespective of gold movements, Mr. McKenna emphasised the point that American prices are not gold prices, but dollar prices. Therefore the world is not on a gold standard or gold exchange standard, but on a dollar standard, since the general world level of prices is governed by the purchasing power of the dollar, and the conclusion was, he added, forced upon us that in a very real sense the world is on a dollar standard.

Mr. McKenna then dealt briefly with the items in the balance sheet and profit and loss account, and said in conclusion: "There has undoubtedly been a great improvement in the relations between capital and labour, while it has given us all great satisfaction to note the gradual but steady recovery of our trade following the grave difficulties through which this country passed in 1926. As I look forward I am hopeful that these tendencies will gain in strength. I do not suggest that we have any cause for unbounded optimism. The problems yet before us are numerous and complicated, but the background is brighter than a year ago."

The report was adopted, other ordinary business was transacted, and the proceedings terminated with a vote of thanks to the chairman.

Mr. Richard Henry Bond, Surbiton, and Fetter-lane, E.C., printer and law publisher, who died in November last, aged fifty-five years, left estate of the gross value of £89,289.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 9th February, 1928.

	Middle Price 25th Jan.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85⅞	4 13 0	—
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	101¼	4 18 6	4 18 9
War Loan 4½% 1925-45	97	4 13 0	4 16 6
War Loan 4% (Tax free) 1929-42	101	3 19 0	3 19 6
Funding 4% Loan 1960-1990	89¾	4 9 6	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94¼	4 5 0	4 7 0
Conversion 4½% Loan 1940-44	97¾	4 12 0	4 16 0
Conversion 3½% Loan 1961	77⅜	4 10 6	—
Local Loans 3% Stock 1921 or after	65¼	4 12 0	—
Bank Stock	258	4 12 0	—
India 4½% 1950-55	93½	4 16 0	4 18 6
India 3½%	72	4 17 0	—
India 3%	62	4 16 6	—
Sudan 4½% 1939-73	94	4 15 6	4 17 0
Sudan 4% 1974	84	4 15 6	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3 13 0	4 12 6
Colonial Securities.			
Canada 3% 1938	85	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	93	4 6 0	5 0 6
Cape of Good Hope 3½% 1929-49	81	4 7 0	5 0 0
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 6
Gold Coast 4½% 1956	94	4 15 6	4 17 6
Jamaica 4½% 1941-71	92	4 18 0	4 18 6
Natal 4% 1937	93½	4 5 6	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	98	4 12 0	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 6
Queensland 5% 1940-60	99	5 1 0	5 3 0
South Africa 5% 1945-75	102	4 18 0	5 0 0
South Australia 5% 1945-75	99	5 1 0	5 0 0
Tasmania 5% 1945-75	100	4 18 6	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 6	—
Birmingham 5% 1946–56	103	4 17 0	4 17 0
Cardiff 5% 1945–65	103	4 17 0	4 18 0
Croydon 3% 1940–60	69	4 7 0	5 0 0
Hull 3½% 1925–55	77	4 9 6	5 0 0
Liverpool 3½ Redeemable at option of Corporation	74	4 14 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 0	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963–2003	65	4 12 0	4 17 0
Metropolitan Water Board 3% 'B' 1934–2003	66	4 11 0	4 15 6
Middlesex C. C. 3½% 1927–47	82	4 5 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946–66	101	4 19 0	4 19 0
Wolverhampton 5% 1946–56	102	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82½	4 17 0	—
Gt. Western Rly. 5% Rent Charge	101	4 19 0	—
Gt. Western Rly. 5% Preference	100	5 0 0	—
L. & N. E. Rly. 4% Debenture	79½	5 1 0	—
L. & N. E. Rly. 4% Guaranteed	79	5 0 6	—
L. & N. E. Rly 4% 1st Preference	71¾	5 12 0	—
L. Mid. & Scot. Rly. 4% Debenture	81	4 19 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	81	4 19 0	—
L. Mid. & Scot. Rly. 4% Preference	71½	5 12 0	—
Southern Railway 4% Debenture	81	4 19 0	—
Southern Railway 5% Guaranteed	100	5 0 0	—
Southern Railway 5% Preference	95	5 5 0	—

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The next meeting (which will be open to all who are in sympathy with the objects of the Union) will be held by kind permission of The Law Society in their Council Room at The Law Society's Hall, Chancery Lane, on Friday, the 3rd of February, 1928, at 6 p.m., when a devotional address will be given by The Rt. Hon. LORD SHAW OF DUNFERMLINE.

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